

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,)	No. 61735-4-I
)	
Respondent,)	
)	
v.)	
)	
ANDRE NUNEZ REBOLLEDO,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: July 20, 2009
)	

Ellington, J. — Andre Rebolledo appeals his conviction for third degree assault. Through counsel, he contends there is insufficient evidence of intent to support the conviction. Rebolledo also raises several arguments in his statement of additional grounds for relief. Finding no merit in any of the arguments, we affirm.

BACKGROUND

Bothell police officers Odegaard and Davis first contacted Andre Rebolledo outside an Eagles Club. Rebolledo was highly intoxicated, and the officers offered him a ride home. Rebolledo refused, and about 10 minutes later, the officers received a 911 call regarding a disturbance at a mobile home park three blocks away. Officers Odegaard and Davis arrived at the scene to find Rebolledo and another man pushing and shoving each other. Rebolledo quickly approached Odegaard, who ordered him

to the ground and handcuffed him as Davis spoke with the witnesses. The officers concluded that Rebolledo was the initial aggressor, and Odegaard placed Rebolledo under arrest.

When Odegaard attempted to place Rebolledo into the police car, Rebolledo failed to comply. Rebolledo stood back up, tried to push past Odegaard, unsuccessfully attempted to head butt him, and kicked or kneed Odegaard in the leg. Odegaard put Rebolledo in a pain compliance hold, kneed him in the midsection, and eventually managed to push Rebolledo into the car, falling into the car himself. Rebolledo began to kick “very rapidly and very hard,” landing kicks to Odegaard’s midsection and chin.¹ As a result, Odegaard’s head struck the roof of the patrol car, causing a slight concussion.

After Odegaard stepped away from the car, Rebolledo continued to thrash about in the back of the patrol car. Officer Nelson, who had since arrived along with Officer Valentino, warned Rebolledo to stop or Nelson would use his taser. Rebolledo did not stop, and was tased.

The State charged Rebolledo with assault in the third degree for kicking Officer Odegaard. Rebolledo was also charged with fourth degree assault for the conduct precipitating the police response. The jury found him guilty of third degree assault but reached no verdict on the other charge. Rebolledo appeals.

DISCUSSION

Rebolledo contends there is insufficient evidence of intent to support his

¹ RP (Apr. 7, 2008) at 39.

conviction. Evidence is sufficient to support a conviction if, viewing the evidence in the

light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.² All reasonable inferences are drawn in favor of the State and most strongly against the defendant.³ A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn from therefrom.⁴

To convict Rebolledo of third degree assault, the State had to prove that he intentionally assaulted Officer Odegaard, who was performing his or her official duties at the time of the assault.⁵

Officer Odegaard testified that he was engaged in official duties when Rebolledo kicked him. While Rebolledo testified that the conduct was accidental—the product of his intoxication and the effect of having been tased—the jury was not compelled to believe his testimony. Indeed, Rebolledo's account is contrary to the testimony of Officers Odegaard and Nelson, who stated that Nelson tased Rebolledo only after he kicked Odegaard.

Given the repeated efforts to kick Odegaard, in addition to the unsuccessful head butt, the jury could reasonably infer Rebolledo intended the assault.⁶ The evidence is sufficient.

² State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

³ Id.

⁴ Id.

⁵ RCW 9A.36.031(1)(g).

⁶ See State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997) (“A jury may infer criminal intent from a defendant's conduct where it is plainly indicated as a matter of logical probability”).

Rebolledo also argues, pro se, that his counsel was ineffective for failing to call witnesses, failing to impeach the State's witness with evidence from the computer assisted dispatch (CAD) report, failing to pursue a self-defense claim, and deferring to the State on jury instructions.

To prevail on a claim of ineffective assistance of counsel, Rebolledo must demonstrate that counsel's conduct was deficient and there is a reasonable probability that, but for the deficient conduct, the outcome of the trial would have been different.⁷ We engage in a strong presumption that counsel's representation was effective.⁸ Where, as here, the claim is brought on direct appeal, we will not consider matters outside the trial record.⁹

We find no support for Rebolledo's claims of ineffective representation in the record before us. His claims mainly reflect disagreements with his counsel's decisions on trial strategy and tactics, which generally will not support a claim of ineffective assistance of counsel.¹⁰ Further, Rebolledo fails to demonstrate that his witnesses would have provided helpful testimony or that a self-defense claim would be appropriate, given his insistence that he did not intentionally kick Odegaard.¹¹

⁷ State v. McFarland, 127 Wn.2d 322, 334–35, 899 P.2d 1251 (1995).

⁸ Id. at 335.

⁹ Id.

¹⁰ See State v. Byrd, 30 Wn. App. 794, 799, 638 P.2d 601 (1981) (decision to call witness is generally a matter of legitimate trial tactics and will not support claim of ineffective assistance); State v. Johnson, 113 Wn. App. 482, 493, 54 P.3d 155 (2002) (counsel was not ineffective for failing to argue self-defense when inconsistent with defendant's testimony and the evidence).

¹¹ State v. Callahan, 87 Wn. App. 925, 929, 943 P.2d 676 (1997) (citing State v. Hendrickson, 81 Wn. App. 397, 400, 914 P.2d 1194 (1996) ("if there is no evidence

Likewise, Rebolledo does not suggest that the jury instructions provided by the State were in any way inadequate.

Rebolledo's argument that counsel was ineffective for failing to cross-examine the State's witnesses using the CAD report is also unpersuasive. In fact, defense counsel did use the CAD report in his cross-examination of Officer Odegaard.¹² And during closing argument, defense counsel used the CAD report to argue that Odegaard's testimony was "very inconsistent."¹³

Because Rebolledo has not shown deficient representation by trial counsel, his claim of ineffective assistance of counsel fails, and we need not reach the question of prejudice.¹⁴

Rebolledo also contends the CAD report shows that Officer Odegaard perjured himself and "made an agreement with [O]fficer Davis and his friend Matthew Harmon to lie to the court."¹⁵ He compares several entries in the report to the testimony by Officers Odegaard and Davis, and argues that inconsistencies establish the witnesses' perjury and affirmatively show that Officer Odegaard was not acting in the course of his official duties at the time of the incident, an essential element of the third degree assault charge.

On the record before us, we find no evidence of perjury. That there are

that the defendant intentionally used force, a self-defense instruction is not appropriate").

¹² See, e.g., RP (Apr. 7, 2008) at 52.

¹³ RP (Apr. 8, 2008) at 34–35.

¹⁴ State v. Malone, 72 Wn. App. 429, 438, 864 P.2d 990 (1994).

¹⁵ Statement of Additional Grounds for Relief at 11.

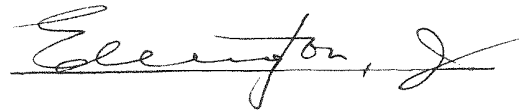
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inconsistencies between the CAD report and the officers' testimony does not establish

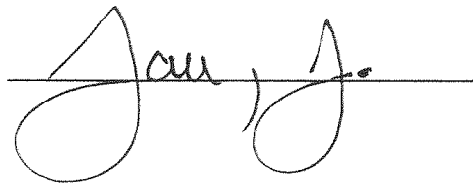
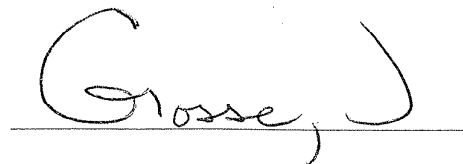
that the officers deliberately gave false information. Rather, it is evidence for the jury to consider in determining the witnesses' credibility. The jury evidently found the officers credible, and these determinations cannot be reviewed on appeal.¹⁶

To the extent that Rebolledo's challenge is to the sufficiency of the evidence that Odegaard was performing official duties at the time of the assault, we find in it no merit. As noted above, challenges to the sufficiency of the evidence admit the truth of the State's evidence and are viewed in the light most favorable to the State.¹⁷ As every other witness indicated that Officer Odegaard was at the scene and acting in his official capacity as a law enforcement officer, the evidence was sufficient.

Affirmed.

A handwritten signature in cursive script, appearing to read "Eberhart, J.", written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Jones, J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Grosse, J.", written over a horizontal line.

¹⁶ State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

¹⁷ Salinas, 119 Wn.2d at 201.